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8 UNITED STATES BANKRUPTCY COURT
9 EASTERN DISTRICT OF CALIFORNIA
10 [Sacramento Division]

11 **In re:**

12 DAVID R. MICHAL,

13
14 Debtor.

CASE NO.: 22-22056-C-7
Docket Control No.: RLL-1
(Countermotion to D.C. No. DM-1)

DATE: January 10, 2024
TIME: 10:00 a.m.
DEPT.: C (Courtroom 35)

Hon. Christopher M. Klein

15
16 **CREDITOR STEVEN D. SCHISLER'S COUNTERMOTION**
17 **FOR AN ORDER DEEMING PROOF OF CLAIM TIMELY FILED**
18 **[Fed. R. Bankr. P. 3002(c)]**

19 Steven D. Schisler ("Schisler"), as a response to the objection (bearing Docket Control
20 No. DM-1) filed by David R. Michal to Schisler's proof of claim, hereby requests an order
21 extending the time for the filing of his proof of claim so as to deem it timely filed. In support of
22 this countermotion, Schisler respectfully represents as follows:

23 1. This involuntary chapter 7 case was initiated against the Debtor on August 18,
24 2022. See Request for Judicial Notice ("RJN"), Exh. 1, at 4 (ECF Docket, entry No. 1). The
25 Order for Relief was entered on June 6, 2023. See id. Exh. 1, at 14 (entry of order Doc. 111),
and shortly thereafter Kimberly J. Husted was appointed as chapter 7 trustee.

26 2. On November 1, 2022, David R. Michal (the "Debtor") filed the List of Creditors
27 required by Federal Rule of Bankruptcy Procedure 1007. Id. Exh. 1, at 8 (filed at Doc. 42). But
28 that list did not include Schisler. See id. Exh. 4, at 31-32 (Statement of Creditors) . As a

1 consequence, Schisler was not included as a recipient of notice of the Judgment for Relief and
2 notice of the chapter 7 trustee's appointment. See RJN, Exh. 5, at 33 (Certificate of Mailing;
3 Schisler not listed).

4 3. Once the Order/Judgment for Relief was entered, the Debtor filed schedules and
5 a Verification of List of Creditors which again failed to include Schisler. Id., Exh. 6, at 35
6 (Sched. E/F); Exh. 7, at 42 (Amended Verification of Master Address List). As such, when the
7 court's Notice to Creditors to File Proof of Claim was dispatched on July 7, 2023, Schisler was
8 not among the parties that received notice by mail. Id. Exh. 8, at 45. The deadline for filing
9 claims in this case was October 16, 2023 (the "Bar Date").

10 4. It was only once Schisler was contacted by the case trustee and was cooperating
11 with her in answering questions about Schisler's pre-petition business relationship with the
12 Debtor that Schisler learned, during a phone conference on October 24, 2023, that filing a proof
13 of claim would be necessary to obtain any dividend from the bankruptcy estate. Schisler filed
14 his Proof of Claim, denoted as Claim No. 7 (the "Claim"), the very next day. See Declaration of
15 Steven D. Schisler, submitted herewith, ¶¶ 7-9.

16 5. Under Federal Rule of Bankruptcy Procedure ("Rule") 3002(c)(6):

17 On motion filed by a creditor before or after expiration of the time to file a
18 proof of claim, the court may extend the time by not more than 60 days from the
19 date of the order granting the motion. The motion may be granted if the court
finds that the notice was insufficient under the circumstances to give the creditor a
reasonable time to file a proof of claim.

20 6. Notice to Schisler was clearly insufficient to give him a reasonable time under
21 the circumstances to file a timely proof of claim. Schisler, who is not experienced in
22 bankruptcy matters and did not have counsel for this bankruptcy until well after the Debtor filed
23 his objection to the Claim, did not learn of the Bar Date until after the Bar Date had run, and this
24 was not due to a failure or fault of Schisler. See Schisler Declaration ¶¶ 7-9.

25 7. Based on the circumstances of this case, under which notice of the Bar Date
26 made impossible a timely claim, the Bar Date is subject to extension pursuant to Rule
27 3002(c)(6), so as to make the Claim timely filed.

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